



April 3, 2002

Mr. Steve Aragón
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2002-1634

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160777.

The Texas Health and Human Services Commission (the "commission") received a request for information regarding the requestor's children. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. *

Initially, we note that chapter 552 of the Government Code does not require a governmental body to make available information that did not exist at the time the request was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 (1986); Open Records Decision No. 362 (1983) (document not within purview of chapter 552 if not in existence at time of request). The commission received the present request on January 7, 2002; thus, information that was not in existence on that day is not responsive to the request. Accordingly, this ruling only addresses the information that was in existence as of January 7, 2002.

Next, we must address the commission's obligations under section 552.301 of the Government Code. A governmental body wishing to withhold requested information must request an attorney general's decision no later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). In this case, the commission failed to request a decision from this office within ten business days of receiving the request. You explain, however, that because of the broad nature of the request, you sought clarification from the requestor on January 17, 2002. *See* Gov't Code § 552.222(b) (authorizing governmental body's request for clarification of records request). The ten-business-day

deadline for requesting a decision from this office was tolled only during the time that the commission was awaiting a response to its clarification request. *See* Open Records Decision No. 663 at 5 (1999). The commission received the requestor's clarification on January 22, 2002; consequently, the ten-business-day period resumed on January 23, 2002. Thus, the deadline for submitting a request for a decision from this office was January 25, 2002. You submitted your request for a decision on January 30; accordingly, we conclude that you did not timely request a decision from this office under section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). As section 552.101 provides a compelling reason to overcome the presumption of openness, we will address your arguments under that exception. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Federal and state statutes prohibit the disclosure of information concerning a state plan for medical assistance, except for a purpose directly connected with the administration of the plan. *See* 42 U.S.C. § 1396a(a)(7); Hum. Res. Code §§ 12.003, 21.012; Open Records Decision Nos. 584 (1991), 166 (1977); *see also* 42 U.S.C. § 1396a(a)(7); 42 C.F.R. § 431.301; Open Records Decision Nos. 584 (1991), 166 (1977). Section 12.003 of the Human Resources Code provides:

- (a) Except for purposes directly connected with the administration of the [Department of Human Service's] assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the [Department of Human Services] or acquired by employees of the [Department of Human Services] in the performance of their official duties.

Hum. Res. Code § 12.003(a). In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the [Department of Human Service’s] clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012 (department shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients of department’s assistance programs to purposes directly connected with administration of programs); *see also* Open Records Decision No. 166 (1977). In this instance, it appears that release of the requested information would not be for purposes directly connected with the administration of the Department of Human Service’s assistance programs. Therefore, this information is confidential under sections 12.003 and 21.012 of the Human Resources Code and must be withheld from disclosure under section 552.101 of the Government Code.

You submit a copy of the requestor’s divorce decree and ask whether the decree grants the requestor a right of access to the requested information. It is not the role of this office, however, to interpret what rights are granted by a divorce decree issued by a district court judge. We must therefore leave this question to the discretion of the district court.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen A. Bates
Assistant Attorney General
Open Records Division

KAB/KAE/sdk

Ref: ID# 160777

Enc: Submitted documents

c: Mr. Ray Benefield
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(w/o enclosures)